



FASULU BRAVERMAN & DI MAGGIO, LLP

ATTORNEYS AT LAW

March 21, 2014

Hon. Katherine B. Forrest
 United States District Judge
 Daniel Patrick Moynihan U.S. Courthouse
 500 Pearl Street
 New York, New York 10007

Re: United States v. Mario Martinez-Barrera
 Docket: 13 Cr 031 (KBF)

Dear Judge Forrest,

I submit this memorandum on behalf of Mario Martinez-Barrera who is scheduled to be sentenced by this Court on April 25, 2014, upon his plea of guilty to a Superseding Indictment charging him with conspiring to use facilities in interstate commerce for the promotion, management and facilitation of a prostitution enterprise in violation of 18 U.S.C. §1952. I respectfully request that this Court consider all factors outlined below in determining a sentence that is sufficient, but not greater than necessary.

Sr. U.S. Probation Officer Michele Bambrick has conducted a thorough examination of Mr. Martinez-Barrera and stated in her report that Mr. Martinez-Barrera is a Criminal History Category I, Guideline Total Offense Level of 20 with a guideline sentence range of 33-41 months. (PSR ¶ 108)¹.

For the reasons stated herein, and to the Court at the time of sentence, I respectfully request that this Court sentence Mr. Martinez-Barrera to a minimum period incarceration² pursuant to 18 U.S.C. §3553(a) and *United States v. Booker*.

I. Background

Mr. Martinez-Barrera was born on August 15, 1979 in Puebla, Mexico to the marital union of Marcelina Barrera and Roberto Martinez. The oldest of five children, Mr. Martinez-Barrera learned the concept of hard work from early on. Beginning at age ten, he took after his father by engaging in

¹ All references to “PSR” refer to probation’s draft PSR dated February 28, 2014. At the time this memorandum was drafted, Counsel for Mr. Martinez-Barrera had not received the final draft PSR from probation.

² Mr. Martinez Barrera has been incarcerated at MDC Brooklyn for approximately 10 months.

strenuous field labor to help support his poverty-stricken family. However, his hard work only carried him so far in a hometown where the ceiling was already set so low. To make matters worse, Mr. Martinez Sr. was a heavy drinker and often beat Mr. Martinez-Barrera, his siblings and his mother while in an alcohol-driven rage. Mr. Martinez-Barrera recalls one horrific occasion where he was beaten by his father with a baseball bat.

Like so many foreigners, Mr. Martinez-Barrera saw the United States as a place of opportunity. He moved to this country around age 16 and settled in New York to live with his father, who had left Mexico after separating from his mother. Shortly thereafter, his father threw Mr. Martinez-Barrera out of his house to live on the streets of Flushing, New York. He spent the next few decades sporadically living in this country illegally, migrating between friends and family members depending on who could provide shelter. Running low on options to financially support himself, Mr. Martinez-Barrera was forced to return to Mexico to live with his mother. While there, he eventually married Anahi Aguillar Sanchez in early 2000. Soon thereafter, the two left Mexico together, again bound for New York and eager for another attempt at a fresh start.

However, Mr. Martinez-Barrera's return was short-lived, as he was stabbed during an altercation with strangers while in Queens. Fearful of being deported, Mr. Martinez-Barrera returned to Mexico to receive healthcare and ended up staying there for approximately five years, living with his mother and helping her sell food from a cart. By this time, he and Ms. Sanchez were separated. Eventually, Mr. Martinez-Barrera decided to return to New York once again, hoping to achieve a better life for himself. He took a job at a dry-cleaning service in Manhattan and met a woman he fell in love with named Diana Barragan. Ms. Barragan was 24 at the time and already had two children of her own. When she and Mr. Martinez-Barrera attempted to have a child of their own, she sadly miscarried and lost the baby. Since then, Mr. Martinez-Barrera became focused on helping support Ms. Barragan and her two children, often remarking how he considers them his own. Ms. Barragan and her children continue to visit Mr. Martinez-Barrera at MDC Brooklyn several times.

II. Section 3553(a) Factors

The Supreme Court held in *United States v. Booker*, 543 US 220, 258 (2005) that the district court has the *duty* to 'consider' the recommended guideline range along with the other factors listed in 18 U.S.C. §3553(a), but is not slavishly bound to follow them. Pursuant to §3553(a) the Court "shall impose a sentence sufficient but not greater than necessary" to comply with the purposes of sentencing. Thus, the Court must consider: (1) the nature and circumstance of the offense and history and characteristics of the defendant; (2) the need of the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence and protect the public; (3) all available sentences; (4) the relevant Guidelines ranges, and (5) the need to avoid sentencing disparities.

In *Gall v. United States*, 128 S.Ct. 586, 597 (2007), the United States Supreme Court held that while the Guidelines should be the "starting point and the initial benchmark" of a reasonable sentence, the sentencing judge "may not presume that the Guideline range is reasonable" and "must make an individual assessment based on the facts presented." The Court also "rejects an appellate rule that requires 'extraordinary' circumstances to justify a sentence outside the Guidelines range."

A. The nature and circumstances of the offense and the history and characteristics of the defendant (18 U.S.C. § 3553 (a)(1)).

The severity and heinousness of the acts attributable to the criminal enterprise Mr. Martinez-Barrera was involved with cannot be overstated. Human trafficking is a global epidemic with widespread impacts of grave implications on so many people. That being said, I would respectfully focus this Court's attention to the specific role Mr. Martinez-Barrera took within this conspiracy.

Without diminishing the severity of his acts, Mr. Martinez-Barrera is significantly less culpable than most of his codefendants. At the time he became involved in this conspiracy, Mr. Martinez-Barrera was virtually homeless. He did not know where his next meal was coming from and he did not know how he was going to afford it. Although he had been recently working part-time at a dry cleaning service, most of the funds he earned were unfortunately diverted to feed his alcohol addiction. Eventually, he was approached and offered a deal whereby in exchange for money, and the occasional food and shelter, he would only be need to hand out business cards to random pedestrians. He spent the next several months doing just that, only entering the brothels if he needed a place to sleep or eat, and never having any sort of contact with the female victims who resided within. After approximately three short months of working for these brothels, Mr. Martinez-Barrera decided to quit and found employment at another dry cleaning service in Manhattan. He was arrested shortly thereafter.

Mr. Martinez-Barrera has lived a virtually crime-free life up until this point and there is no present indication of recidivism. Barrera's only prior charge for disorderly conduct resulted in a conditional discharge. (PSR ¶ 83). He came to this country for the same reason so many have before him: to take advantage of this nation's unique opportunities and to establish for himself a better life. Yet, he became involved with the wrong people and is now suffering the consequences for his poor judgment. Mr. Martinez-Barrera regrets his actions and wishes nothing more than to spend time caring for Ms. Barragan and her children providing them the love and stability akin to the family structure he never had for himself. The following are only excerpts from the attached collection of letters written by friends and family members on Mr. Martinez-Barrera's behalf.

- Brenda Martinez-Barrera (Mario's sister) refers to Mr. Martinez-Barrera as a "very good person" who is both loving and supportive.
- Jose Luis Alejandro (Mario's brother-in-law) refers to him as a fatherly figure that is missed and supported.
- Mario's brother, Oscar Martinez-Barrera, refers to him as a good and loving person is is dearly missed.

B. The need for the sentence imposed to: afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; to provide the defendant with medical care, or other correctional treatment in the most effective manner; and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct (18 U.S.C. § 3553 (a)(2)).

Mr. Martinez-Barrera is adequately aware that due to his immigration status, he faces a significant likelihood of enduring deportation proceedings. With the very small risk of Mr. Martinez-Barrera being allowed to rejoin this country's general citizenry, the need to protect the general public from further crimes is significantly low.

Furthermore, while Mr. Martinez-Barrera in no way wishes to diminish the criminal aspect. The Government and PSR outline Mr. Martinez-Barrera's relevant conspiratorial conduct, and it is clear that what he did, although illegal, was at the behest of his superiors. I would thus respectfully

ask the Court to focus its attention to the sentences already given to several of the co-conspirators in this case.

- Margarito Degante was sentenced on February 14, 2014, by Your Honor to 60 months' imprisonment with a subsequent supervised release term of two years and was ordered to pay \$3,000 in restitution. Mr. Degante admitted to working for the brothels as a driver whereby he delivered the female victims to customers for the purpose of engaging in commercial sex. (PSR ¶ 11, 36).
- Manuel Gomez-Batana was sentenced on February 20, 2014, by Your Honor to 60 months' imprisonment to be followed by two years' supervised release and was ordered to pay restitution in the amount of \$3,000. Mr. Gomez-Batana admitted to working at the door of these brothels for three years where he would keep track of customers' arrivals. (PSR ¶ 15, 41).
- Marcus Mendez-Pedro was sentenced by Your Honor on January 31, 2014, to 60 months' imprisonment to be followed by three years' supervised release and was ordered to pay restitution in the amount of \$3,000. Mr. Mendez-Pedro admitted to working in a brothel by guarding the door and collecting money from customers. (PSR ¶ 18, 43).
- Javier Francisco Mendez-Ramirez was sentenced by Your Honor on January 31, 2014, to 60 months' imprisonment to be followed by three years' supervised release and was ordered to pay restitution in the amount of \$3,000. Mr. Mendez-Ramirez admitted to working at a brothel for one year where he was responsible for guarding the front door, collecting money from customers and watching over the female victims. (PSR ¶ 19, 44).
- Alejandro Degante-Galeno was recently sentenced by Your Honor on March 6, 2014, to 60 months' imprisonment to be followed by two years' supervised release and was ordered to pay restitution. Mr. Degante-Galeno worked as a driver for the brothels, delivering the female victims to customers for the purposes of engaging in commercial sex. This defendant had also enlisted the help of his wife and children to assist him in his capacity of driver. (ECF 259, *United States v. Florez-Mendes* 13 Cr. 031 (KBF) Judgment of March 10, 2014 for sentencing on March 6, 2014.)

Mr. Martinez-Barrera's limited role in this conspiracy is deserving of a lesser sentence than the above four codefendants.

Conclusion

Therefore, in light of the foregoing, I would respectfully request that a sentence for Mr. Martinez-Barrera to serve a minimum time of incarceration is sufficient, but not greater than necessary and that this Court find he is financially unable to pay any amount of restitution.

Respectfully Submitted,

/s/ Louis Fasulo

Louis V. Fasulo, Esq.

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VIA ECF:
AUSA Rebecca Mermelstein

Mr. Judge,

My name is Brenda Martinez Barrera. Mario Martinez Barrera is my older brother. He has always been a very good person. He has always given me very good examples and his advices as an older brother have been very good. He is very loving with his nieces and nephews. He is a good uncle. [He] has always worried (cared) for all of his family. He is like a father to me and he is a good son [who] has always worked to help my mom since my mother was a single mom, and my brother has always worked to help her support us and I love him very much and we miss him.

Truly yours,

Brenda Martinez Barrera

Señor Juez
Mi nombre es Brenda Martinez Barrera
Nasio Martinez Barrera Es mi hermano
mayor el siempre ha sido una muy buena
persona siempre me ha dado muy buenos
ejemplos y sus consejos como hermano
mayor ha sido muy buenos el es muy
corinoso con sus sobrinos el es
un buen tío siempre sea preocupado
por toda su familia el es como un
padre para mi y es un buen hijo siempre
ha trabajado para ayudar a mi mama ya
q' mi madre fue madre soltera y siempre
mi hermano trabajo para ayudarla y poder
sacarnos adelante y lo quiero mucho y
lo extrañamos

Atte
Brenda Martinez Barrera


Mr. Judge,

My name is Jose Luis Alejandro. Mario Martinez Barrera is my brother-in-law. I lived 4 years with him. [He] is a good person. My children miss him very much, they were used to playing baseball every Sunday and we enjoyed doing it. [He] has been very good with his mother since weekly he sustained her economically. [He] is truly like a father to his siblings. All miss his presence.

Truly yours,

Jose Luis Alejandro

Señor Juez

Mi nombre es Jose Luis Alejandro. Mario Martinez Barrero es mi cuñado. Convivi 4 años con él es una buena persona mis hijos lo extrañan mucho estaban acostumbrados a jugar beisbol todos los domingos y disfrutamos hacerlo ha sido muy bueno con su mama pues semanalmente la sostenia economicamente realmente es como un padre para sus hermanos todos extrañamos su presencia

Attn-
Jose Luis Alejandro

Jorge

Letter of Recommendation
to the Judge

March 21, 2014

Dear: Judge

I recommend this document as
he's Sister-in-law to Mario Martinez Barrera
person who I have know for 3 years.
Brother of my husband who comes
to visit and during this time it
has always been distinguished for
being responsible and worthy of
confidence. Therefore we strongly
recommend to use this document for
various procedures.

Arexis Martinez
Amartinez

03/21/2014

Hello Mr. Judge, a very good afternoon.

My name is Oscar Martinez Barrera. I am brother to Mario Martinez-Barrera and only want to let you know that my brother is a good person. He is like my father because ever since my father came to this country, my brother took care of us and taught us good examples and would help us in everything. Now that he's not here with us, we feel bad and miss him a lot and, also, he's a good uncle—he loves his nieces and nephews very much. He also helps my mom a lot and he is a good friend, brother, and more like a father, the best, and much more Judge.

One page is not enough to say all of the good that my brother is. I only ask that you have mercy on my brother because he is a human being, and we all commit mistakes.

Thank you Mr. Judge. Sincerely,

Oscar Martinez Barrera

03/21/2014

Hola señor Juez Muy Buenas tardes
tenga usted Mi nombre es
Oscar Martinez Barrera
soy hermano de Mario Martinez Barrera
y solo le quiero contar que mi
hermano es una buena persona
el es como mi Padre Por que desde
mi Padre se vino a este País
Mi Hermano se iso cargo de
nos otros y nos enseñó buenos
ejemplos y nos ayudava en todo
y a hora que no esta con nos
otros nos sentimos mal y lo extrañamos
mucho y tambien es un buen tio
Quiere mucho sus sobrinos

X Pues tambien Alluda mucho Ami mama
X el es lo mejor un Buen
Hijo Hermano y como Pradre
lo maximo x muchas cosas
Mas Señor JES
Pero una Hoja no alcanza
Para de Sobre todo lo Bueno
que es Mi hermano
solo le pido que se apiade
de Mi Hermano por que el es
un ser humano y cometemos errores
y gracias señor JES Atentamente

Oscar Martinez Barreto

March 15, 2014

Dear Judge, this letter is written by Teresa Barrera Lo Pez, cousin of Mario Martinez-Barrera. I know my cousin since he was young and he has always been a hard working and respectful person. He lived with me some years and was always courteous and would always help me with the rent payment and with housing expenses. I ask, please, that you take this letter into consideration.

Sincerely,

Teresa Barrera Lopez

Marzo 15 2014

Señor Juez le escribe esta Carta
Teresa Barrera López, Prima de
Mario Martínez Barrera.

Yo Conosco a my Primo desde Fueño
y Siempre a sido una Persona trabajadora
y Respetosa Conmigo vivio algunos
años y Siempre Fue amable y Siempre
me ayudava con el Pago de Renta y Con
los Queaceres de la Casa. le Pido Por
Favor Tome en Consideración esta Carta

A.T.M.

Teresa Barrera Lopez